(2007) 10 MAD CK 0043

In the Madras High Court

Case No : Tax Case Appeal No. 347 of 2004

Commissioner of Income Tax APPELLANT

Vs

Obli Granites RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:
Income Tax Act, 1961 — Section 80HHC

Citation : (2007) 10 MAD CK 0043

Hon'ble Judges : K. Raviraja Pandian, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : T. Ravikumar, for the Appellant;

Final Decision : Allowed

Judgement

K. Raviraja Pandian, J.—The Revenue has filed this appeal against the order of the Tribunal dated 15.5.2002 made in I.T.A. No.

1537/Mds/94.

2. The appeal was admitted on the following substantial question of law:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the benefit of Section 80HHC is available for the

export of granite slabs for the year 1989-1990?

3. The material facts for the purpose of disposal of the appeal is as follows:

The assessee is a partnership firm carrying on business in granites. For the assessment year 1989-1990, the assessee had claimed the benefit of

deduction u/s 80HHC for export of rough granites. The Assessing Officer denied the benefit of the exemption u/s 80HHC on the ground that the

granites fall under the category of ores and minerals and are not eligible for the benefit of 80HHC. The Assessing Officer relied on the judgment of the Supreme Court in the case of The State of Mysore Vs. Swamy Satyanand Saraswati, Religious Preacher, Raichur, and the Karnataka High

Court in the case of Muddeereswara Mining Industries Vs. Commissioner of Income Tax, to reach such conclusion. Aggrieved by the assessment

order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). He gave relief to the assessee holding that the

amendment to Section 80HHC by Finance Act, 1990 which amended the 12th Schedule to include ""cut and polished minerals and rocks including

cut and polished granites"", should be read as explanatory and that the benefit u/s 80HHC was available even during the earlier years. Aggrieved by

the order of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal on the ground

that during the relevant assessment year, minerals and ores were not eligible for the benefit of Section 80HHC and the subsequent amendment

including the same cannot be given the retrospective benefits. However, the Tribunal by the impugned order dismissed the Department''s appeal

holding that even prior to the amendment including ""cut and polished minerals and rocks including cut and polished granites"" for the benefit of

Section 80HHC, the income from export of granite is eligible for its benefit. The correctness of the said order is now put in issue before this Court

by filing the appeal and framing the question of law as aforesaid.

3. We heard the learned standing counsel appearing for the Revenue and perused the materials placed on record.

4. The issue is squarely covered by the three Judges Bench judgment in Gem Granites v. Commissioner of Income Tax reported in 271 ITR 332,

wherein it has been held that the assessee which exported the granites after being cut and polished was not entitled to claim the deduction u/s

80HHC of the Income Tax Act, 1961, in respect of the profits from the export business for the assessment year 1987-1988. For the assessment

year prior to the incorporation of the amendment to Sub-section 2 of Section 80HHC in the year 1991, the very same issue has been considered

by us following the Supreme Court judgment in T.C. Nos. 426 & 427 of 2004, dated 16.8.2007. Hence, the tax case appeal is allowed in favour

of the Revenue. No costs.

